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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,223	05/07/2001	Antony Walter Anson	78014.018	2854
7590 05/29/2007				
Dewitt Ross & Stevens				
8000 Excelsior Drive Suite 101				
Madison, WI 53717-1914				
		EXAMINER		
		WOO, JULIAN W		
		ART UNIT PAPER NUMBER		
		3731		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/762,223	<b>Applicant(s)</b> ANSON ET AL.	
	<b>Examiner</b> Julian W. Woo	<b>Art Unit</b> 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 March 2007 and 18 August 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 51, 53, 55-64, 67, 68 and 70 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 51, 53, 55-61, 63, 64, 67, 68 and 70 is/are rejected.
- 7) ☒ Claim(s) 62 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>8/18/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. According to the petition decision of March 9, 2007, the finality of the Office action of "February 11, 2003" (i.e., the Office action mailed on February 19, 2003) was withdrawn, and the application is not abandoned. Therefore, the Applicant's amendment, filed on August 18, 2003, is hereby examined as a timely response to a non-final rejection.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 63 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The fixator is said to retain the graft "on the walls of an artery or vein." An artery or vein, an unpatentable part of the human body, is essentially claimed as a structural part of the invention.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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5. Claims 51, 53, 55-61, 63, 64, 67, 68, and 70 are rejected under 35 U.S.C. 102(e) as being anticipated by Berg et al. (6,994,713). Berg et al. disclose, at least in figures 1, 13-15 and 18 and in col. 2, lines 3-55; col. 4, lines 4-65; and col. 7, line 14 to col. 8, line 26; a fixator for retaining a graft on an artery, where the fixator includes a plurality of first parts (14 at one end), at least one second part (14 at another end), a resilient member (16) connecting the first and second parts, where at least a portion of at least a portion of both the first and second parts is sharpened (at 14a), where the resilient member biases the first and second parts toward each other into a retaining configuration (e.g., see fig. 18), where the first and second parts are moveable into an open configuration at least substantially disposed along a common axis with the resilient member and further apart than in the retaining configuration (e.g., see fig. 13), where at least one of the first and second parts forms an arcuate shape in the retaining configuration, where the device is formed from a wire (i.e., tube 10 is deemed a hollow wire or elements 14 are wires), where the device is formed from a shape memory alloy (e.g., nitinol), where the device has plurality of second parts (14), where the plurality of parts is integral, where the device has equal numbers of first and second parts (14), where the fixator is formed of a plurality of sets linked together by a wire (i.e., sets are at least two portions or sections of the fixator, where each portion or section comprises a first part, a resilient member, and a second part; and where the plurality of portions or sections is wrapped with a wire, according to col. 2, lines 45-50), where the fixator is combined with a graft (30), where the fixator comprises an elongated member (16 and 14 combined) extending between first and second parts defining terminal ends, and

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where the fixator comprises elongated members (a plurality of elements 16a and 14 combined) extending between first and second parts, and where each elongated member is normally biased into the retaining configuration.

***Allowable Subject Matter***

6. Claim 62 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: None of the prior art of record, alone or in combination, discloses a fixator included in a kit, where the fixator includes, inter alia, a plurality of first parts, at least one second part, and a resilient member connecting the first and second parts; and where the kit includes, inter alia, a device for supporting a catheter having a locating member, a plurality of support members, and resilient member, and a device for dilating an artery having a locating member, a plurality of dilating members, and a resilient member.

***Response to Amendment***

8. Applicant's arguments with respect to the rejection of claims 51, 53, 55-61, 63, 64, 67, 68, and 70 under 35 U.S.C. 102(b) have been considered but are moot in view of the new ground(s) of rejection.

With respect to arguments regarding priority of the application: The Applicant's identification of priority in the Official Filing Receipt of July 23, 2001 is proper and is acknowledged.

Applicant's arguments regarding the rejection of claims under 35 U.S.C. 112, 1<sup>st</sup> paragraph, are persuasive, and the rejection is hereby withdrawn.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fleischmann et al. (6,132,438) teach a fixator with a resilient member and first and second parts.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian W. Woo whose telephone number is (571) 272-

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4707. The examiner can normally be reached Mon.-Fri., 7:00 AM to 3:00 PM Eastern Time, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Julian W. Woo  
Primary Examiner

May 24, 2007